

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LINDA STILLWELL and RICHARD
STILLWELL, husband and wife and marital
community thereof,,

Plaintiffs,

v.

MULTICARE HEALTH SYSTEM, a
Washington Corporation, and SHARON
CHANCE and JOHN DOE CHANCE and
the marital community thereof,,

Defendants.

No. 3:11-cv-05117-BHS

DECLARATION OF KARIN D. JONES IN
SUPPORT OF DEFENDANTS' MOTION
FOR AN ORDER TO COMPEL
DISCOVERY AND IMPOSE SANCTIONS

Noted for Consideration: January 6, 2012
(No Oral Argument Requested)

I, KARIN D. JONES, declare as follows:

1. I am an attorney at Stoel Rives LLP and am one of the attorneys representing Defendants in this matter. I am over the age of eighteen years, I am competent to testify, and I have personal knowledge of the facts set forth herein.

2. On August 30, 2011, Defendants served their First Set of Interrogatories and Requests for Production of Documents ("Defendants' Discovery Requests") on Plaintiffs' counsel, Michael Davis, via United States mail and electronic mail. Attached hereto as Exhibit 1 is a true and correct copy of Defendants' Discovery Requests, with Plaintiffs' incomplete responses, as described in Paragraph 9, below.

DECLARATION OF KARIN D. JONES IN SUPPORT OF DEFENDANTS' MOTION FOR AN
ORDER TO COMPEL DISCOVERY AND IMPOSE SANCTIONS - 1
(No. 3:11-cv-05117-BHS)

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STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

1 3. On October 5, 2011, two days after Plaintiffs' responses to Defendants'
2 Discovery Requests were due, Plaintiffs' counsel, Mr. Davis, sent an email request to my
3 assistant for "an electronic copy of Defendant's Discovery Requests to help in answering them."
4 I responded to Mr. Davis' email that same day, forwarding a Microsoft Word version of
5 Defendants' Discovery Requests for his use, but noting that Plaintiffs' responses were overdue
6 and asking when Plaintiffs could expect to receive them. A true and correct copy of this email
7 exchange is attached hereto as Exhibit 2.

8 4. On October 7, 2011, I received a letter from Mr. Davis, a true and correct copy of
9 which is attached hereto as Exhibit 3, in which he stated: "I anticipate that I will be able to
10 provide discovery answers to your office by Thursday[,] October 13, 2011." Attached hereto as
11 Exhibit 4 is a true and correct copy of my responsive email, in which I acknowledged that we
12 would expect the discovery responses by October 13th.

13 5. We did not receive Plaintiffs' responses to Defendants' Discovery Requests on
14 October 13, 2011. Therefore, on October 14, 2011, I sent a letter to Mr. Davis, a true and correct
15 copy of which is attached hereto as Exhibit 5, requesting that Plaintiffs serve their overdue
16 discovery responses immediately.

17 6. Mr. Davis did not respond to my October 14th letter until November 2, 2011,
18 when he sent me an email stating: "My plan is to have answers to you by this Friday,"
19 (November 4, 2011). A true and correct copy of that email is attached hereto as Exhibit 6.

20 7. We did not receive Plaintiffs' discovery responses on Friday, November 4, 2011.
21 Thus, I sent Mr. Davis a letter on Monday, November 7, 2011, a true and correct copy of which
22 is attached hereto as Exhibit 7, stating that we expected to receive Plaintiffs' discovery responses
23 that week.

24 8. Mr. Davis sent me an email on Friday, November 11, 2011, representing that he
25 would be meeting with Plaintiff Linda Stillwell that weekend and would have Plaintiffs'
26

1 discovery responses to us by Monday, November 14, 2011. A true and correct copy of the email
2 is attached hereto as Exhibit 8.

3 9. On Tuesday, November 15, 2011, Plaintiffs finally served incomplete responses
4 to Defendants' Discovery Requests, a true and correct copy of which is attached hereto as
5 Exhibit 1. The responses provided answers to some of Defendants' interrogatories, but provided
6 absolutely no responses to Defendants' twenty-three requests for production of documents. Mr.
7 Davis sent an email that same date, stating: "I am working on having the responsive documents
8 copied and delivered to your office. There are a few interrogatories that Ms. Stillwell is
9 gathering information to respond to." I responded by email, requesting that the responsive
10 documents be delivered to our office right away and the answers to interrogatories supplemented
11 as soon as possible. A true and correct copy of this email exchange is attached hereto as Exhibit
12 9.

13 10. On November 18, 2011, I sent an email to Mr. Davis, inquiring into the expected
14 date of service of the responsive documents and supplemental discovery responses. A true and
15 correct copy of the email is attached hereto as Exhibit 10. Mr. Davis never responded to my
16 email.

17 11. On December 6, 2011, I sent another email to Mr. Davis, noting that we had still
18 not received Plaintiffs' responses to Defendants' requests for production of documents and
19 requesting a discovery conference call with Mr. Davis at 9:30 AM on December 12, 2011. A
20 true and correct copy of the email is attached hereto as Exhibit 11. Mr. Davis never responded to
21 my email.

22 12. At the designated time on December 12, 2011, my colleague Tim O'Connell and I
23 attempted to call Mr. Davis, but his assistant informed us that he was unavailable to take our call.
24 Mr. O'Connell left a voice mail for Mr. Davis, indicating that we intended to file a Motion to
25 Compel regarding the missing discovery responses and encouraging Mr. Davis to call either Mr.
26 O'Connell or me to discuss the issue.

DECLARATION OF KARIN D. JONES IN SUPPORT OF DEFENDANTS' MOTION FOR AN
ORDER TO COMPEL DISCOVERY AND IMPOSE SANCTIONS - 3
(CV09 1411 RAJ)

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1 13. Mr. Davis never contacted Mr. O'Connell or me by telephone, but instead
2 responded with an email in which he stated: "I am copying the documents and will have them
3 mailed by Wednesday," (December 14, 2011). On that same date, December 12, 2011, Mr.
4 O'Connell sent an email to Mr. Davis, on which I was copied, stating, in relevant part: "Based on
5 your representation below, we'll hold off filing a motion right now. However, if we do not
6 receive anything this week I believe we have exhausted any obligation we might have under
7 FRCP 37 and we will file our motion." A true and correct copy of that email chain is attached
8 hereto as Exhibit 12.

9 14. We did not receive the promised documents or supplemental discovery responses
10 during the week of December 12, 2011. On Monday, December 19, 2011, Mr. Davis sent Mr.
11 O'Connell and me an email, a true and correct copy of which is attached hereto as Exhibit 13,
12 stating: "I copied the Stillwell documents and they are being mailed today." Despite this
13 representation, as of the date of the filing of this Declaration, we have never received any
14 responses to Defendants' Requests for Production of Documents.

15 15. At times during his exchanges with Mr. O'Connell and me, Mr. Davis provided as
16 a reason for his delay the fact that his mother has been ill. However, Mr. Davis's failure to
17 timely respond to Defendants' Discovery Requests is not an isolated incident. Mr. Davis
18 displayed a similar pattern of non-responsiveness with respect to the parties' Joint Status Report
19 and Discovery Plan ("Joint Status Report"). On June 9, 2011, Mr. O'Connell and I conferred by
20 telephone with Mr. Davis to discuss the Joint Status Report. On June 14, 2011, Mr. O'Connell
21 sent the draft Joint Status Report to Mr. Davis in an email on which I was copied, requesting Mr.
22 Davis's approval of the draft and his authorization to file it with this Court. Mr. Davis never
23 responded, and I followed up with another email on June 17, 2011. A true and correct copy of
24 that email chain is attached hereto as Exhibit 14. Mr. Davis never responded to my June 17th
25 email. I sent another follow-up email on June 24, 2011, the due date of the Joint Status Report,
26 again requesting Mr. Davis's authorization to file the Joint Status Report with this Court. A true

1 and correct copy of that email is attached hereto as Exhibit 15. I also attempted to call Mr. Davis
2 on June 24, 2011, and I left a message with someone at his office. Mr. Davis did not return my
3 call. On July 7, 2011, the Court contacted me to request that we file the Joint Status Report. I
4 again attempted to call Mr. Davis and left a message at his office. He did not return my call. At
5 the Court's request, I filed the Joint Status Report, although Mr. Davis had never responded to
6 our repeated requests to provide his approval and authorization to file it with the Court.

7 16. Attached hereto as Exhibit 16 are true and correct copies of Orders from several
8 cases before this Court and the Superior Court of the State of Washington in and for Pierce
9 County in which motions to compel discovery have been granted against Mr. Davis and/or his
10 clients. The cases before this Court were obtained through PACER.

11 17. I spent at least 5 hours on tasks connected solely with Plaintiffs' failure to respond
12 to Defendants' Discovery Requests, including drafting repeated correspondence to Plaintiffs'
13 counsel; attempting to contact him by telephone; and researching and preparing this Motion to
14 Compel and accompanying declaration. My current hourly rate is \$285. Mr. O'Connell spent at
15 least 2 hours on tasks associated with Plaintiffs' failure to respond to Defendants' Discovery
16 Requests, including attempted contacts of Plaintiffs' counsel, e-mail communication with him
17 and review and revision of this Motion to Compel. Mr. O'Connell's current hourly rate is \$450.
18 Defendants' attorneys' fees associated with this Motion total \$2,325.

19 I declare under penalty of perjury of the laws of the United States and of the State of
20 Washington that the foregoing is true and correct.

21 DATED this 22nd day of December, 2011 at Seattle, Washington.

22
23 s/ Karin D. Jones
24 KARIN D. JONES
25
26

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties in the above case.

STOEL RIVES LLP

s/ Karin D. Jones

Timothy J. O'Connell, WSBA #15372

Karin D. Jones, WSBA #42406

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